



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

April 14, 1953

Hon. Travis D. Shelton
District Attorney
Lubbock, Texas

Opinion No. S-29

Re: Constitutionality of
Chapter 354, Acts of
the 52nd Legislature,
1951.

Dear Sir:

You have requested our opinion as to the constitutionality of Chapter 354, Acts of the 52nd Legislature, 1951, being House Bill No. 744, and known as Article 1436c, Vernon's Penal Code.

The caption of such Act reads as follows:

"An Act making it unlawful to steal any internal combustion engine, electric motor, water well pump or battery used for irrigation or livestock watering purposes or any accessorial part of any such engine, motor, pump or battery; making such offense a felony or a misdemeanor; prescribing punishment therefor; and declaring an emergency. "

There is no further designation in the body of the Act as felony or misdemeanor.

Section 35 of Article III of the Constitution of Texas provides in part as follows:

"No bill . . . shall contain more than one subject, which shall be expressed in its title. . . ."

In passing on the constitutionality of a similar caption to Article 1442a, V.P.C., the Court of Criminal Appeals has held:

". . . Chapter 15, Acts of First Called Session of Thirty-ninth Legislature, contains the law, if any there be, making the theft of chickens a felony. The caption of the Act contained in said Chapter is as follows:

"'An Act making it unlawful for the fraudulent taking of any chicken or turkey, making such offense a felony or a misdemeanor, prescribing punishment therefor; and declaring an emergency.'

"It is thus declared that the offense which is to be created by, and found in, the body of the act, is 'a felony or a misdemeanor.' Nothing later on or further sheds light on the inquiry above raised. Manifestly the act denounced cannot be both a felony and a misdemeanor. If this be true, the caption of the bill in question is not in compliance with the commands of Section 35, Art. 3, of our Constitution. . . . As said in . . . one object of Section 35, Art. 3, of our Constitution is to prevent the combination of incongruous enactments in a statute. The attempted making of a single act, viz, the taking of a chicken or a turkey, a felony or a misdemeanor, would be the combining of incongruous enactments. So this title is in direct violation of the Constitution." Redding v. State, 109 Tex. Crim. 551, 552, 6 S.W.2d 360, 361 (1928).

The Redding case is controlling and has not been overruled. Therefore, it is the opinion of this office that Chapter 354, Acts of the 52nd Legislature, 1951, known as Article 1436c V.P.C., contains two incongruous subjects in contravention of Section 35 of Article III of the Constitution of Texas, and is unconstitutional.

SUMMARY

Chapter 354, Acts of the 52nd Legislature, 1951, known as Article 1436c V.P.C., contains two incongruous subjects in contravention of Section 35 of Article III of the

Hon. Travis D. Shelton, page 3 (S-29)

Constitution of Texas, and is therefore
unconstitutional.

APPROVED:

Rudy Rice
State Affairs Division

Willis E. Gresham
Reviewer

C. K. Richards
Reviewer

Robert S. Trotti
First Assistant

John Ben Shepperd
Attorney General

JA/rt

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By 
John Atchison
Assistant